



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2013

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-03820

Dear Mr. Cumbie:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 480639 (CFW PIR No. W022434).

The City of Fort Worth (the "city") received a request for all records relating to a specified officer-involved motor vehicle accident. You state you are releasing some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless made confidential under this chapter or other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). The information we have marked consists of an estimate for repairs of a city police department vehicle that constitutes information used to estimate the need for or expenditure of public funds and is subject to section 552.022(a)(5) of the Government Code. Although you claim section 552.108 of the Government Code for this information, we note section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(5). Thus, the city may not withhold the estimate information we have marked under section 552.108 of the Government Code. However, we note the information subject to section 552.022(a)(5) contains motor vehicle record information subject to section 552.130 of the Government Code, which makes information confidential under the Act.¹ Therefore, we will address the applicability of section 552.130 to this information. We will also address your argument under section 552.108 for the information not subject to section 552.022(a)(5).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Accordingly, the city must withhold the information we have marked in the information subject to section 552.022(a)(5) under section 552.130 of the Government Code. The remaining information subject to section 552.022(a)(5) must be released.

Next, we turn to your assertion of section 552.108 of the Government Code for the information not subject to section 552.022(a)(5) of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided an affidavit demonstrating, the information at issue relates to an ongoing criminal investigation by the city's police department. Based on these representations and our review, we agree section 552.108(a)(1) is applicable. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-87. This information includes, but is not limited to, the location of the crime, the premises involved, the time of occurrence of the crime, the property involved, the vehicles involved, and a detailed description of the offense. See Open Records Decision No. 127 at 4-5 (1976). Accordingly, with the exception of any basic information, the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.

In summary, the city must release the estimate information we have marked pursuant to section 552.022(a)(5) of the Government Code, but it must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 480639

Enc. Submitted documents

c: Requestor
(w/o enclosures)